

**TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE**



**FISCAL NOTE**

**SB 632 - HB 1615**

March 16, 2009

**SUMMARY OF BILL:** Changes the criteria for use when the Department of Environment and Conservation (TDEC) makes determinations as to whether a small body of water is considered a stream or wet weather conveyance for permitting purposes. Currently, TDEC examines the aquatic species present to make such a determination. This bill would prohibit determination in this manner. Under the provisions of this bill determinations would be based upon rules promulgated by the Water Quality Control Board in accordance with Tenn. Code Ann. § 69-3-205(a)(2). TDEC would be required to develop protocols, guidance, qualifications, and training necessary to make hydrologic determinations for streams, wetlands and wet weather conveyances within 180 days of the effective date of the act.

**ESTIMATED FISCAL IMPACT:**

**Decrease State Revenue – \$47,400**

**Increase State Expenditures – \$188,800/One-Time  
\$1,086,700/Recurring**

**Other Fiscal Impact – According to TDEC, this bill may place the state out of compliance with the Federal Clean Water Act. As a result, approximately \$2,000,000 in federal funds to the state may be jeopardized.**

**Assumptions:**

- TDEC rules promulgated in accordance with Tenn. Code Ann. § 69-3-205(a)(2) would require a biological survey for each stream determination.
- TDEC makes approximately 800 stream determinations annually.
- TDEC contracts with the Department of Health to do lab work for biological surveys. Each one costs approximately \$800. As a result, there would be a recurring increase in state expenditures of approximately \$640,000 (800 x \$800 = \$640,000) to do the required lab work for each survey.

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- TDEC would require five additional positions to perform the expanded scope of determinations based upon biological surveys. The recurring increase in state expenditures for salary, benefits, travel and motor vehicle costs for these is \$432,700. The one-time cost for supplies associated with these positions is \$10,800.
- TDEC will contract for the development of a training course at a one-time cost of approximately \$178,000. The recurring cost for the required training for TDEC personnel is estimated to be \$14,000.
- TDEC estimates that there will be a decline of approximately 30 percent in the issuance of Aquatic Resource Alteration Permits issued for certain stream alterations. The average annual revenue TDEC collects for these permits is \$158,000. A 30 percent decrease would result in a decrease in state revenue of approximately \$47,400 ( $\$158,000 \times 30\% = \$47,400$ ).
- As a result of the United States Supreme Court's decision in *Rapanos v. United States*, 126 S. Ct. 2208 (2006), the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers have issued agency guidelines for determining if a particular body of water is a "water of the United States." These guidelines are based on federal law, rules, and decisions of the courts. It appears that some of the waters which may be excluded from oversight by TDEC in accordance with the provisions of this bill would be considered waters of the United States. The state guidelines for oversight therefore would be inconsistent with the federal guidelines. As a result, the state may be out of compliance with the Federal Clean Water Act. Non-compliance would jeopardize up to \$2,000,000 in federal funds to the state.

## **CERTIFICATION:**

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is fluid and cursive, with the first name "James" and last name "White" clearly legible.

James W. White, Executive Director

/cce